

LEASE OF RAILROAD EQUIPMENT BETWEEN THE BUNCHER COMPANY,
A PENNSYLVANIA CORPORATION,
(hereinafter called Lessor),

and the

ROSCOE, SNYDER AND PACIFIC RAILWAY COMPANY,
A TEXAS CORPORATION,
(hereinafter called Lessee),

RECORDATION NO. 7409 Filed & Recorded

FEB 25 1974 - 8 55 AM

WITNESSETH:

INTERSTATE COMMERCE COMMISSION

WHEREAS, the Lessor is acquiring twenty-five (25) XM boxcars, (as identified in Exhibit A), which cars will be delivered during February of 1974, and being hereafter called the Cars; and

WHEREAS, the Lessor desires to lease these Cars to the Lessee at the rentals and for the terms and upon the conditions hereinafter provided:

NOW, THEREFORE, in consideration of the mutual covenants of the parties hereto it is agreed as follows:

1. The Lessor hereby lets the Cars unto Lessee, and the Lessee hereby hires the Cars from Lessor, for a term and at the rentals and subject to the other terms and provisions herein set forth. The Cars shall in all times remain and be the sole and exclusive property of the Lessor, and the Lessee shall have no right or title therein except the lease rights herein expressly granted to Lessee.

2. The term of this lease, hereinafter called Original Term, shall begin on the date of delivery to and acceptance by the Lessee of the first Car and shall terminate on the date which shall be ten (10) years from the average date of acceptance. For this purpose the "average date of acceptance" shall be a date determined by multiplying the number of Cars accepted by Lessee on each day by the number of days elapsed since the date of the acceptance of the first Car then add the products so obtained and divide by the total number of Cars so accepted. The result fixed at the nearest whole number which added to the date of acceptance of the first Car will result in a date which is the average date of acceptance.

3. Lessee agrees to pay to Lessor as rental for each of the Cars during the Original Term the following amounts:

(a) The Lessee will collect and remit to Lessor monthly as received, all per Car Hire revenues (per diem and mileage) earned by the Cars during the term of this agreement, except revenues defined as "Incentive Per Diem" (Rule 1- Code of Car Hire Rules & Interpretations Freight-Revised - effective March 1, 1973). Provided however, that any increase in per diem and mileage earned by the Cars during the term of this lease in excess of the rates effective at the commencement of this lease shall be paid to Lessor only in the amount of sixty percent (60%) of such increase, the remaining forty percent (40%) of which increase collected by Lessee shall belong to and be the property of Lessee. All "Incentive Per Diem" will accrue to and be the property of the Lessee.

(b) In addition to the above revenues as collected, the Lessee will pay to Lessor as a monthly rental the sum of Thirty Dollars (\$30) per Car per month commencing on the first day of the month next succeeding the day each Car is tendered for shipment of its initial load. Provided, however, the payment of this per Car rental is conditioned upon the Cars being eligible for "Incentive Per Diem" compensation at the level of rates established at the date of this agreement in the Code of Car Hire Rules & Interpretations--Rule 1 (Revised) effective March 1, 1973. Should there be a change in the Car Hire Rules which result in a reduction or increase in the amount of Incentive Per Diem that the Cars are eligible to accrue to the Lessee as compared to the amount the Cars are eligible to earn under the present rate of Incentive Per Diem rates, the amount of the rental charge provided in this paragraph will be subject to re-negotiation (It is recognized that the Cars must be eligible to accrue to the Lessee sufficient Incentive Per Diem rates to offset and/or exceed the amount of the rental charges payable by the Lessee to the Lessor under this subparagraph. This factor will be the principle in any re-negotiation of such rental charges).

4. The Lessee at its own expense will perform all administrative and accounting functions pertaining to the operation of the Cars including those required by the ICC, DOT, AAR and other regulatory agencies. Lessee grants Lessor free and complete access to all such information, records and reports including accounting data pertaining to the operation, use and condition of the Cars. Lessee shall furnish Lessor monthly such accounting or other information to promptly and accurately reflect the utilization and movement of the Cars and the Car Hire and mileage revenues earned by the Cars. Lessee shall do and perform all such other acts as may be required by law, or reasonably requested by Lessor, for the protection of Lessor's title to and interest in the Cars.

5. Maintenance and repair of the Cars shall be performed by Lessee or other railroads according to the Interchange Rules adopted by the AAR, Mechanical Division, Operation and Maintenance Department. The Lessor will assume the cost of maintenance and repair of the Cars and/or will promptly reimburse the Lessee for such costs upon receipt of statement from Lessee. Except for normal running repairs and maintenance performed by Lessee or other railroads in accordance with the AAR Interchange Rules, Lessor reserves the right to utilize its own repair facilities for repair or maintenance of Cars when deemed appropriate to do so. Lessee shall promptly notify Lessor in the event repairs and maintenance are required in excess of the normal running repairs and maintenance provided for by railroads in accordance with the AAR Interchange Rules.

In the event a Car requires extensive repairs, is destroyed or badly damaged as defined in the AAR Interchange Rules, the monthly rental charge provided in Paragraph 3 shall abate, and be reinstated, as and when per diem abates, or is reinstated, in accordance with the AAR Code of Per Diem Rules - Freight.

Lessee shall deal with other railroads for the account of Lessor in matters relating to use, operation, maintenance, repair, destruction of and heavy damage to cars, generally in the manner as though the Cars were owned by Lessee. All proceeds received as settlement for Cars or damages to Cars will accrue to Lessor and will be promptly remitted to Lessor by Lessee as and when received.

6. Lessor agrees that during the continuance of this lease, it will promptly pay all taxes, assessments and other governmental charges, including sales or use taxes, levied or assessed upon the Cars herein. Lessee shall see to the proper registration and reporting of such Cars as required for tax purposes. If such taxes are paid by Lessee, Lessor will promptly reimburse Lessee for all such taxes so paid.

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7. At or prior to the time of each delivery of Cars by Lessor to Lessee, the Lessee will cause one of the Lessee's car identification numbers to be assigned to and placed on each car then delivered. Such Cars will carry "RSP" reporting marks. Lessee will register and furnish all such reports and information to the AAR, UMLER and other regulatory agencies as required to qualify the Cars for use in accordance with the AAR Interchange Rules and Regulations and the AAR Code of Car Hire Rules. Cars will be registered as AAR Mechanical Designation "XM".

8. At or prior to the time of each delivery of Cars by Lessor to Lessee, Lessor shall cause both sides of each Car to be distinctly, permanently and conspicuously marked by stenciling or by a metal plate affixed thereto, with the following legend in letters not less than one inch in height:

"THE BUNCHER COMPANY
PITTSBURGH, PENNSYLVANIA
OWNER-LESSOR"

Lessee shall immediately replace or cause to be replaced any such marking which may be removed, destroyed or become illegible wholly or in part.

with
* 9. Lessee will indemnify Lessor against loss or damage caused during the term of this lease by or to any of the Cars hereby leased, or to or by the contents thereof, ~~howsoever occurring~~ and will indemnify Lessor against any loss or damage suffered by it by reason of or arising out of any default by Lessee hereunder. Lessee will not assign, transfer, encumber, or otherwise dispose of this lease, the Cars or any part thereof or sublet or underlet the Cars hereby leased, or change or permit to be changed or altered the present lettering and/or numbering on said Cars or any of them without the consent of Lessor in writing first obtained. Lessee will not permit or suffer any encumbrances or liens to be entered or levied upon the Cars, or any of them. * Except due to cause or causes beyond the reasonable control *with* of the Lessee.

10. In the event default shall be made by Lessee in the observance or performance of any of the covenants, conditions and agreements contained herein and such default shall continue for thirty (30) days after written notice from Lessor to Lessee specifying the default, Lessor, at its option may by notice in writing to Lessee immediately terminate this lease and thereupon Lessee shall deliver possession of Cars to the Lessor and shall cause said Cars to be delivered to Lessor at Lynchburg, Virginia or such other place as Lessor designates. Lessee will remain liable to Lessor for any and all amounts which under the terms of this lease may then be due or which may become due and unpaid for the use of the Cars including revenues and rentals accruing on the Cars after date of default until such date as the Cars are returned to and in physical possession of Lessor.

11. Either party hereto may terminate this agreement by giving to the other notice of such termination in writing not less than six (6) months prior to the date of termination, which date shall be stated in said notice.

12. Upon the expiration or termination of this lease, Lessee shall promptly cause the Cars to be returned to the Lessor at Lynchburg, Virginia or such other place or places as Lessor designates, in the same good condition, order and repair as when initially delivered to Lessee, ordinary wear and tear accepted.

13. Any notice required or permitted to be given to the Lessor shall be deemed to have been given when deposited in the United States Mail, first class postage prepaid, addressed as follows:

THE BUNCHER COMPANY
5600 Forward Avenue
Pittsburgh, Pennsylvania 15217

or such other address as may be specified in writing by the Lessor to the Lessee.

Any notice required or permitted to be given to the Lessee shall be deemed to have been given when deposited in the United States Mail, first class postage prepaid, addressed as follows:

ROSCOE, SNYDER AND PACIFIC RAILWAY COMPANY
111 Cypress Street
Roscoe, Texas 79545

or such other address as may be specified in writing by the Lessee to the Lessor.

14. The terms of this lease and the rights and obligations of the parties hereto hereunder may not be changed or terminated orally but only by an instrument in writing signed by the party against whom enforcement of such change or termination is sought.

IN WITNESS WHEREOF THE PARTIES have hereunto caused this Lease of Railroad Equipment to be signed as of the 20th day of February, 1974.

ATTEST:

Richard K. Gulem
Secretary

THE BUNCHER COMPANY

BY

Jack Bruncher
President

ROSCOE, SNYDER AND PACIFIC RAILWAY CO.

BY

Wm L Bailey
President

ATTEST:

T. D. Huff
Secretary

LEASE OF RAILROAD EQUIPMENT BETWEEN THE BUNCHER COMPANY

and

THE ROSCOE, SNYDER AND PACIFIC RAILWAY COMPANY

EXHIBIT A

Quantity of Cars: Twenty-five (25)

Description: 70 ton - roller bearing - 50'-6" single sheathed class "XM" boxcars with outside posts; 10'-0" sliding doors; rigid underframe. Manufactured by Berwick Forge and Fabricating, Berwick, Pennsylvania as per specifications issued December 12, 1973 covering BFF LOT - 19400.

Reporting Marks and Numbers: RSP-5000 - 5024, both inclusive
(Roscoe, Snyder and Pacific
Railway Company)

Ownership Identification: (Both sides of each car in letters not less than 1" in height)

"THE BUNCHER COMPANY
PITTSBURGH, PENNSYLVANIA
OWNER-LESSOR"

COMMONWEALTH OF PENNSYLVANIA X
COUNTY OF ALLEGHENY X

SS:

On this 20th day of February, 1974, before me personally appeared Jack H Buncher

, to me personally known, who being by me duly sworn, says that he is the President of The Buncher Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

Ruth Carol Hoffman

My Commission expires May 10, 1975
RUTH CAROL HOFFMAN, Notary Public
PITTSBURGH, ALLEGHENY COUNTY, PA.
MY COMMISSION EXPIRES MAY 10th, 1975

THE STATE OF TEXAS X
COUNTY OF Nolan X

SS:

On this 14th day of February, 1974, before me personally appeared Wm L. Bailey

, to me personally known, who being by me duly sworn, says that he is the President of Roscoe, Snyder and Pacific Railway Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

Glen E. Pitts

My Commission expires 6-1-75